1 2 3 4 5 UNITED STATES DISTRICT COURT 6 WESTERN DISTRICT OF WASHINGTON AT TACOMA 7 BRIAN TOFTE; CYNTHIA ALDERETTE; Case No. 3:22-cv-05700-TMC 8 MICHAEL T SMITH, ORDER ON OPENING STATEMENTS 9 Plaintiff, 10 v. 11 CITY OF LONGVIEW; JORDAN 12 SANDERS, 13 Defendant. 14 15 **ORDER** I. 16 The Court makes the following rulings on Defendants' objections to Plaintiffs' 17 demonstrative exhibits for opening statements: 18 1. The objections to the photographs of Justin Tofte (objections 1–4) are 19 OVERRULED. Photographs of the decedent are relevant to damages, and it is not 20 unduly prejudicial for the jury to learn about Justin's childhood or family life in a 21 wrongful death case. The Court may sustain objections under Federal Rule of 22 Evidence 403 if at some point the number of photographs becomes cumulative or 23 unduly prejudicial. 24 ORDER ON OPENING STATEMENTS - 1

- 2. The objections to the use of Sgt. Sanders's deposition testimony (objections 5–6) are OVERRULED. The deposition of an adverse party may be used for any purpose. Fed. R. Civ. P. 32(a)(3). Sgt. Sanders's testimony about his training is not a legal conclusion.
- 3. The objection to the training PowerPoint (objection 7) is OVERRULED.
  Testimony about Defendants' training is not an impermissible legal conclusion so long as it is presented as evidence of their training and practices and not impermissible testimony about what the law requires.

The Court will rule on the remaining filings by the parties (Dkt. 92, Dkt. 99) from the bench on the first day of trial.

Dated this 21st day of October, 2024.

Tiffany M. Cartwright
United States District Judge